

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

257

CWP-5439-2018

Date of Decision :02.06.2022

Priti

..Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Walia, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the prayer of the petitioner is that her husband namely, Balwant Rai, who was working as Langri (Cook) with the respondent-department should be treated as regular employee in service upto the date of his death and, thereafter, the petitioner be released the benefits as admissible to the legal heirs of the dead employee for the services rendered by the said employee including family pension.

The facts which have been stated in the petition are that the husband of the petitioner namely, Balwant Rai, was initially appointed as Langri (cook) in Borstal Jail, Ludhiana on daily wage basis, where he continued working from 01.11.1987 till his death. Learned counsel for the petitioner submits that during the said period, keeping in view the instructions dated 07.01.2010, which were issued by the Government of Punjab for

regularizing the services of daily wage employees, the name of the husband of the petitioner was sent for regularization of his service on 04.10.2011 (Annexure P/4), which proposal was approved by the competent authority and vide order dated 23.04.2013 (Annexure P/5), the other similarly situated employees, who were working with the husband of the petitioner were regularized but, the husband of the petitioner was not regularized on the ground that he is not attending his duties w.e.f 06.10.2012. The husband of the petitioner unfortunately died on 25.01.2016. After the death of the husband of the petitioner, petitioner claimed the benefits in respect of service rendered by her late husband by serving a legal notice dated 01.01.2018 (Annexure P-6) and in reply to the same dated 06.02.2018 (Annexure P-7), claim of the petitioner was declined on the ground that services of the late husband of the petitioner were terminated on 06.02.2010. The present petition has been filed by the petitioner claiming that the husband of the petitioner namely, Balwant Rai be treated as regular employee for all intent and purposes and the petitioner be granted the service benefits in respect of the service rendered by her late husband including family pension.

Upon notice of motion, the respondents have filed reply, wherein, it has been mentioned that though, the husband of the petitioner was appointed on 01.11.1987 on daily wage basis but, he attended his duties only upto 06.02.2010, after which date, the husband of the petitioner remained absent from duty. It has been further mentioned in the reply that though the department had proposed regularization of the services of the husband of the petitioner on 04.10.2011, however, in the year 2013 when services of similarly situated employees were notified as being made regular, as the husband of the petitioner was absent from duty at that relevant time, his services were not

regularized upto the date of his death. Respondent department conceded that a different stand has been taken in the reply (Annexure P-7) to the legal notice dated 01.01.2018 (Annexure P-6) served upon them that the services of the husband of the petitioner were terminated on account of his absence from duty from 06.02.2010, due to which, his service could not be regularized. Learned counsel for the respondents further submits that though, vide order dated 23.04.2013 (Annexure P/5), it has been mentioned that the husband of the petitioner is absent from duty from 06.10.2012 but, the said date has been inadvertently mentioned whereas, the husband of the petitioner remained absent from duty from 06.02.2010 onwards and his services were terminated from the said date itself. Learned State counsel submits that as on the date when the services of the other similar employees were regularized husband of the petitioner was not performing his duties, his services were not regularized, hence, the claim of the petitioner for treating her husband as regular employee for the grant of service benefits including family pension may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which needs to be decided in the present petition is whether late husband of the petitioner, who had worked with the respondents on daily wage basis for a period of more than two decades is entitled to be considered regular employee in the facts and circumstances of this case. It is a conceded position that the respondents themselves have considered the case of the late husband of the petitioner for regularization of his services, which proposal dated 04.10.2011 was also approved by the competent authority and only consequential order of regularization was not issued in favour of the late

husband of the petitioner on the ground that when the services of the other similarly situated employees were regularized i.e. on 23.04.2013, late husband of the petitioner was not attending his duties. That being so, it is a conceded position that the regularization of the services of the late husband of the petitioner stood approved by the competent authority but, was not notified.

It is a conceded position that the policy of regularization, which was being implemented in the case of the late husband of the petitioner, was issued in December, 2006. According to the said policy, an employee who was in service on December, 2006 and has rendered 10 years of service, is entitled for regularization of his services. Keeping in view the fact that the late husband of the petitioner qualified the eligibility clauses of the said regularization policy issued in December, 2006, the department initially recommended the case of the late husband of the petitioner along with other similarly situated employee in January, 2010. There was no objection from any side with regard to any disqualification being suffered by the late husband of the petitioner. The said proposal was again reiterated by the department on 04.10.2011, which proposal also included the name of the late husband of the petitioner for regularization of his services as per policy issued in December, 2006. That being so, the eligibility for regularization of the service of the late husband of the petitioner is to be seen as on December, 2006 and any subsequent event will not take away the right of regularization of the services, especially when the similarly situated employees have been extended the said benefit. Therefore, it is a conceded position that the late husband of the petitioner fulfilled all the requisite conditions of the regularization policy issued in December, 2006 and the recommendations of the department dated 07.01.2010 and 04.10.2011 stood approved by the competent authority, the

benefit of the regularization of the services had to be extended to the late husband of the petitioner as well.

The question which arises is whether there was any valid justification to decline the said benefit or the reasons being given by the respondent that the late husband of the petitioner was absent from duty or his services were terminated in February, 2010, can be treated as valid objections in the facts and circumstances of the present case. Nothing has been presented before this Court to prove that service of the late husband of the petitioner was ever terminated by the respondents. Rather, learned counsel for the respondents conceded before this Court that no such termination exists on record. The question which remains is whether the alleged absence of the late husband of the petitioner has been substantiated by the respondents so as to deny the benefit of the regularization of the late husband of the petitioner when the services of the similarly situated employees were regularized on 23.04.2013. The said alleged absence can not be accepted for various reasons. Firstly, the respondents have taken different stands while passing the order dated 23.04.2013, wherein it was mentioned that the late husband of the petitioner was absent whereas in reply to the legal notice issued by the petitioner, the stand taken by the respondents was that the services of the late husband of the petitioner were terminated in February, 2010. On being asked as to why these facts were missing while recommending the case of the husband of the petitioner for regularization on 04.10.2011, the respondents could not explain. These contradictory stands being taken by the respondents show that their stand is not worthy of acceptance in the facts and circumstances of the present case and the benefit has to be given to the employee as the alleged absence or the termination of the services of the late husband of the petitioner has not been

proved on record.

Therefore, keeping in view the facts and circumstances of this case, wherein respondents themselves have conceded before this Court that services of late husband of the petitioner was duly approved to be regularized by the competent authority keeping in view the proposal of the respondent department dated 04.10.2011 and that the said benefit was not extended to him only on the ground of alleged absence from duty subsequent to the said proposal, which alleged absence has not been substantiated before this Court. The respondents are held to be liable and are directed to pass an appropriate order regularizing the services of the late husband of the petitioner with effect from the date the similarly situated employees were granted the said benefit i.e. 23.04.2013 and treat the late husband of the petitioner as regular employee from the said date till the date of his death.

Even otherwise, once an employee has completed more than two decades of services on daily wage basis, he/she is entitled for the grant of benefit of regularization of service, in case the said benefit has been extended to the similarly situated employees. In the present case, late husband of the petitioner, even up to the date of alleged absence had rendered 23 years of service and his name had already been approved by the competent authority for regularization of his service, along with this, the services of similarly situated employees were also duly notified and they were granted the benefit of regularization, hence, in view of the settled principle of law settled by the Hon'ble Supreme Court of India in **Prem Singh vs. State of Uttar Pradesh and others** in **Civil Appeal No.6798/2019** decided on 02.09.2019, wherein it was held that where an employee had worked for two or three decades he/she is entitled to be treated as regular employee even if, up to the date of

superannuation he/she has not been regularized. Relevant paragraph of the said judgment is as under:-

“35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”

On similar lines Hon'ble Supreme Court of India in the judgment rendered in **Special Leave to Appeal (C) No.1109 of 2022** decided on 18.02.2022 titled **State of Gujarat and others versus Talsibhai Dhanjibhai Patel** has held the denial of pension by State to adhoc employee who continuously worked for 30 years, as unreasonable. The relevant paragraph of the said judgment is reproduced hereunder:-

“It is unfortunate that the State continued to take the services of the respondent as an adhoc for 30 years and thereafter now to contend that as the services rendered by the respondent are

ad hoc, he is not entitled to pension/pensionary benefit. The State can not be permitted to take the benefit of its own wrong. To take the services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continuous service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.”

In the present case, the husband of the petitioner has also undisputedly rendered about 2 ½ decades of continuous service, though on ad hoc basis.

Further, the regularization of service of the husband of the petitioner along with other similarly situated employees were to be done keeping in view the instructions which have been issued by the respondent-State in December, 2006. In the said instructions, the requirement was that an employee should have completed 10 years of service upto December, 2006 in order to become eligible for the regularization of his/her services. Learned State counsel has conceded before this Court that the husband of the petitioner was working with the respondents on the said cut off date and had completed 10 years of regular service upto December, 2006. The eligibility for regularization is to be seen under the instructions upto the cut off date. It is not even the case of the respondent-State that there was any alleged misconduct by the late husband of the petitioner upto December, 2006, so as to exclude him from the grant of relief of the regularization of his services. Once the late husband of the petitioner was eligible for regularization of his service under the policy concerned in December, 2006, the said benefit can not be declined on the basis of alleged allegations which are much subsequent to the cut off date, especially when the competent authority on file approved the claim of regularization of the husband of petitioner and the alleged subsequent

misconduct is also not proved on record. Therefore, the claim of the petitioner that her husband should be treated as a regular employee on the date of his death, is squarely covered keeping in view the facts and circumstances of this case.

Further, it is being alleged that the late husband of the petitioner was not attending his duties starting from February, 2010 onwards. If that be so, then why the said fact was not mentioned in the letter dated 04.10.2011, which was issued after a period of 1 ½ years of the alleged absence, wherein the name of the husband of the petitioner was recommended for the regularization of his services. In case, the late husband of the petitioner was absent on 04.10.2011, the said fact should have been in the said letter also but the said fact is missing in the letter dated 04.10.2011. That being so, the allegations of the petitioner that the grounds which have been taken to deny the benefit of regularization of service to the late husband of the petitioner, is an after thought, can not be dismissed outrightly. Therefore, the petitioner has made out the case for the relief as raised in the present petition with regard to the regularization of the services of her late husband.

Learned counsel for the petitioner has stated before this Court that she will not claim any benefit of arrears from 23.04.2013 till 25.01.2016 i.e date when late husband of the petitioner died.

Keeping in view the above, this petition is allowed to the extent that late husband of the petitioner namely Balwant Rai be treated as regular employee with effect from the date similarly situated employees were granted the said benefits i.e. 23.04.2013. As late husband of the petitioner is to be treated as regular employee w.e.f. 23.04.2013, let respondents calculate the service benefits, for which, the petitioner becomes entitled for in respect of the

service rendered by Balwant Rai and pensionary benefits after his death. It is made clear that as the late husband of the petitioner was in service prior to 1.1.2004, he will be entitled for the benefits under the Old Pension Scheme, keeping in view the settled principle of law settled by the Division Bench of this Court in **CWP No.2371-2010** titled as **Harbans Lal vs. State of Punjab**.

Let benefits, for which, the petitioner is entitled for under this order be calculated and released to the petitioner within a period of two months from the date of receipt of copy of this order.

The petition stands allowed in above terms.

June 02, 2022
aarti/maninder

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No